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Held at the Palais Wilson, Geneva, on Friday, 27 March 2015, at 3 p.m.

Chairperson: Mr. Salvioli

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The meeting was called to order at 3.05 p.m.

Organizational and other matters

Draft general comment No. 36 (CCPR/C/GC/R.36)

1. **The Chairperson**, reminding participants that the Committee had decided in October 2014 to begin work on a new general comment on the right to life to replace an outdated version, invited the co-rapporteurs to present the draft general comment No. 36.

2. **Mr. Shany** (Rapporteur for general comment No. 36), reviewing the drafting and consultation process, said that the intention was to make it as transparent as possible by inviting civil society and academia to share their views at a half-day of discussion to be held at the next session in July 2015. In the meantime, they had begun a thorough review and cataloguing of the Committee's relevant decisions and views as well as those of other United Nations and non-United Nations entities. Drawing the Committee's attention to paragraph 4, he said that they had deliberately cast a wide net and that the purpose at that stage was to lay out a discussion agenda for the July meeting.

3. **Sir Nigel Rodley** (Rapporteur for general comment No. 36) said he recalled that there had been State party representatives present at the consultations held regarding general comment No. 35. He invited the Committee members to comment on whether the document constituted a suitable outline for the discussion in July and whether there were any issues that they felt strongly should be included or removed.

4. **Ms. Seibert-Fohr** said that the Committee should review all its jurisprudence before it decided whether or not to include an issue in the general comment. Supported by **Mr. Iwasawa**, **Mr. Vardzelashvili** and **Ms. Waterval**, she also said that the Committee should consider carefully whether or not to refer to concluding observations lest it should be bound by what were designed to be State party-specific recommendations.

5. **Mr. Iwasawa**, pointing out that States parties were not mentioned in paragraph 3 regarding the half-day of discussion, asked whether they were in fact excluded.

6. **Mr. Ben Achour** said that he was not against using the draft as the outline of the future general comment; however, he would invert sections A and B, in other words, begin with the general issues, to be followed by the technical analysis. Recalling that the purpose of general comments was to guide Governments and the judiciary, he cautioned against being overly academic and not sufficiently practical. In that connection, he wondered whether the general comment was the right medium for raising issues, such as those mentioned in paragraphs 5 (c) and (d), which could lead the Committee down the path of never-ending cultural debates. Turning to editorial matters, he urged the drafters to use Roman numerals correctly as the current format was difficult to read.

7. **Mr. Rodríguez-Rescia** said that the Committee should not limit the number of issues at that stage but rather do so as discussions progressed. Pointing out that there were two types of States parties, namely those that were and those that were not also parties to the Optional Protocol, he said that if the Committee based itself solely on its jurisprudence then it would in effect be addressing only those States that had accepted the communications procedure. Citing concluding observations in the general comment would be a means of systematizing them. Referring to Mr. Ben Achour's comment, he said that issues like in vitro fertilization were not philosophical points; they were very real issues that related directly to the right to the family and the right to life. He suggested the inclusion of the notion of life plans.

8. **Mr. Vardzelashvili** asked what the rapporteurs' view was on referencing concluding observations, since the Committee did not have extensive jurisprudence on issues such as the right to die and frozen embryos. Should the general comment only reflect

existing views or also open the door for discussions of an abstract nature? Perhaps it was enough to simply state that a given issue might fall under article 6 of the Covenant?

9. **Mr. Politi** said that he supported the suggestion to invert sections A and B and asked what other opportunities the Committee members would have to comment on the draft after the half-day of discussion.

10. **The Chairperson** reminded the Committee members that they were merely at the beginning of what would be a very long path to the adoption of the general comment; therefore, there was no need to make any rushed decisions that day.

11. **Ms. Waterval**, supported by **Mr. Muhumuza**, asked how the Committee would ensure that all States parties, including those without representation in Geneva, were able to participate in the consultations.

12. **Mr. Bouzid** suggested that a paragraph should be included from the outset, clearly listing the various sources used in the general comment.

13. **Ms. Cleveland** pointed out that many countries, some of which were also the world's worst violators of the right to life, paid heed only to the Committee's concluding observations. She said that a blanket exclusion of the concluding observations would deprive the Committee of useful examples and of an audience from countries that were not subject to the communications procedure.

14. **Mr. Seetulsingh**, recalling that the States parties had been highly involved during the preparation of general comment No. 35, said he was confident that they would manage to submit their views regardless of their location.

15. **Mr. Ben Achour**, returning to his earlier point, said he thought the Committee should choose the issues it would cover carefully, not because they were not real, but because they were polemical, bearing in mind that the Committee could not afford to launch into complex debates.

16. **Mr. Iwasawa** recalled that the Committee's decisions regarding individual communications were legal findings and were not restricted to the parties to the Optional Protocol, whereas the recommendations contained in concluding observations were not based strictly on the law. Therefore, caution was warranted to avoid making recommendations binding by incorporating concluding observations in the general comment.

17. **The Chairperson** recalled that all the concluding observations were based on articles of the Covenant; otherwise the Committee would be exceeding its mandate. He said that the Committee should not restrict itself in the general comment; the work of the members should be not only to list issues, but also to define criteria and provide guidance. If the issues being discussed were merely academic in nature, there would not have been such considerable State party participation during the preparation of general comment No. 35. The States parties were not formally invited to the half-day of discussion because they would have other opportunities to submit their views later on in the process.

18. **Mr. Ben Achour** asked how States parties had been involved in drafting general comment No. 35.

19. **Ms. Fox** (Secretariat) said that States parties had been asked to submit written suggestions regarding draft general comment No. 35 following its first reading, rather than attend the half-day of discussion with NGOs, although delegations from some States parties had attended that meeting despite not being invited. The Committee had decided that it was more useful for NGOs to be consulted on the draft initially and for States parties to comment on the completed draft subsequently.

20. **Sir Nigel Rodley** said that while States parties were not excluded from the consultation with civil society, they were consulted primarily after the first reading, once they had received the text and made suggestions. Those suggestions could then be accepted or rejected by the Committee, which was entirely responsible for the general comment. Definitive decisions on the general comment's content were not necessary at that stage; opinions from Committee members were welcome, but it would not be their last opportunity to share them. A first draft of the general comment would be produced and analysed in detail by the Committee following the consultation to be held that July. It would then be circulated to all stakeholders, including States parties, and the Committee would undertake a second reading in the light of the responses received.

21. Judgements of the International Court of Justice demonstrated that the Committee's concluding observations did not hold the same authority as its views and general comments, although they remained a valuable source of information on the Committee's opinions and indicated the type of subjects it broached, like abortion and euthanasia. Such matters could not be ignored and it was necessary to identify language that accurately expressed the Committee's opinions.

22. A more legible way of setting out the subparagraphs was required. Section B contained miscellaneous issues that did not share the same level of general importance; consideration would be given to presenting them at the start of the document. It would be interesting to discover whether there was a remedy similar to the project mentioned by Mr. Rodríguez-Rescia that was applicable to article 6 of the Covenant. Lastly, the Committee should consider not only its own output, but also the practice of States parties and *travaux préparatoires*.

23. **The Chairperson** said that it should be emphasized that the Committee's concluding observations were the result of a long and detailed process.

24. **Mr. Shany** said that all comments made by the Committee were valuable and would be given full consideration. The general comment should reflect the views of the Committee as a whole, and paragraph 2 alluded to the fact that it was based on experience obtained during consideration of reports submitted by States parties, communications and previous general comments. Nevertheless, he agreed that the general comment should draw on other sources as well and, rather than limiting itself to being an academic instrument, guide States parties and individuals in understanding their obligations and rights under the Covenant. While general comments could refer to concluding observations, more care should be taken than when referring to views or other general comments. General comment No. 35, for example, cited far more views than concluding observations, an approach that he believed to be sensible. The title of section B was misleading and could perhaps be amended to "Other issues".

25. **The Chairperson** said that references to concluding observations might have to be removed from the general comment so as to respect the word limit. The draft general comment needed to be adopted, so he invited the Committee to consider it, paragraph by paragraph. Paragraph 2 of the Spanish version should be amended so that it referred to article 6.

26. **Mr. Iwasawa** said that indentation should be used in paragraph 5 to improve clarity.

27. **Mr. Rodríguez-Rescia** said that the idea of positive preventive action by States parties should be included in paragraph 5, or elsewhere in the general comment.

28. **The Chairperson** said that in paragraph 5 (a) (i) of the Spanish version, "*proteger*" should be replaced by "*garantizar*", which would encompass the concept of prevention.

29. **Mr. Bouzid**, supported by **Mr. Shany**, said that article 16 of the Covenant should be included in paragraph 5 (a) (i).

30. **The Chairperson** said that the list of articles in paragraph 5 (a) (i) should be introduced by "for example".

31. **Mr. Rodríguez-Rescia** said that reference to article 16 was made in paragraph 6.

32. **The Chairperson** said that, in that case, paragraph 5 could be left unchanged.

33. **Ms. Pazartzis** asked whether other rules of international law could be included in paragraph 6 (a) (ii).

34. **Sir Nigel Rodley** said that the list of rules was not exclusive and should address the intersection between international human rights legislation and other areas.

35. **Mr. Iwasawa** suggested that the draft comment could contain one section addressing the relationship between article 6 and other articles of the Covenant, and another addressing the relevance of international law to article 6.

36. **Mr. Rodríguez-Rescia** said that paragraph 6 (a) (iv) should read "the legitimate use of lethal force".

37. **Mr. Shany** said that he did not oppose the proposal made by Mr. Rodríguez-Rescia. Paragraph 15 (a) already referred to the division of labour between article 6 and other articles.

38. Following a discussion in which **the Chairperson**, **Sir Nigel Rodley** and she took part, **Ms. Seibert-Fohr** said that the Convention on the Prevention and Punishment of the Crime of Genocide, mentioned in paragraph 8 in relation to article 6, paragraph 2, was important in relation to the whole of article 6.

39. **Mr. Rodríguez-Rescia** suggested that paragraph 11 should refer to interim measures to prevent execution.

40. **The Chairperson** suggested that the rapporteurs might consider whether a violation of interim measures, which had been requested by the Committee, could lead to loss of life.

41. **Sir Nigel Rodley** said that non-respect for interim measures could cause irreparable harm; that had not been made explicit in the draft. As exemplified by a judgement of the Inter-American Court of Human Rights, the Committee should not limit itself to following its own case law.

42. **Mr. Shany** said that the intention had been to address interim measures in paragraph 9 (a) (ii). Nevertheless, a connection would be made between interim measures and commutations and pardons.

43. **Mr. Bouzid** said that paragraph 13 should refer to the protection of all persons from the death penalty.

44. **The Chairperson** said that paragraph 13 referred to article 6, paragraph 5, of the Covenant, which dealt specifically with certain categories of persons; the protection of all persons could be addressed elsewhere.

45. **Mr. Bouzid** said that paragraph 13 included persons with disabilities, who were not addressed by article 6, paragraph 5.

46. **Mr. Shany** said that paragraph 13 did indeed refer to categories of persons not covered by article 6, paragraph 5. The legal obligation to protect them would have to be deduced from elsewhere in the Covenant, but for the purposes of organization, Mr. Bouzid's suggestion could be taken into account when considering special protection for vulnerable persons.

47. **The Chairperson** said that he would leave it to the rapporteurs to decide where to include Mr. Bouzid's suggestion.

48. **Mr. Politi** suggested that "cross-sectoral issues" might be used as the heading for paragraph 15.

49. **Ms. Pazartzis** said that the draft comment should distinguish between general issues and miscellaneous issues, with general issues being listed first.

50. **Mr. Shany** suggested using "cross-cutting issues" as the heading for paragraph 15.

51. **Mr. Iwasawa** and **Mr. Ben Achour** requested an explanation of the term "indicators" in paragraph 15 (o).

52. **Mr. Rodríguez-Rescia** requested clarification of paragraph 15 (f).

53. **Mr. Shany** said that paragraph 15 (f) referred to the application of obligations under article 6 to non-State actors and suggested replacing "including" with "and' to avoid any ambiguity. The reference to indicators related to the invitation to civil society to decide whether indicators were useful in interpreting the Covenant.

54. **Sir Nigel Rodley** said that paragraph 15 (f) referred to States parties' obligations under the Covenant regarding the actions of non-State actors, who did not have any obligations.

55. **Ms. Seibert-Fohr** said that the rapporteurs should be allowed to restructure the draft general comment. For example, the special protection mentioned in paragraph 15 (l) might be covered in paragraph 6, and references to non-refoulement could be moved from paragraph 7 to paragraph 6, given that it could be deemed a protection measure.

56. *Draft general comment No. 36 (CCPR/C/GC/R.36) as a whole, as amended, was adopted.*

The meeting was suspended at 4.55 p.m. and resumed at 5.10 p.m.

Implications of the treaty body strengthening process for methods of work

57. **The Chairperson** invited the Secretary of the Committee to report on the impact of the word limit applicable to the annual report.

58. **Ms. Fox** (Secretary of the Committee) said that General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system had imposed a limit of 10,700 words on all treaty body reports, including annual reports. The Committee's Views on communications and follow-up developments could therefore no longer be incorporated in the annual report and it had been proposed that they should be replaced by hyperlinks to the relevant documents. Chapter V of Volume II of the annual report, containing an analytical summary of the Committee's Views under the Optional Protocol, would also be deleted. The Chief of the Petitions and Inquiries Section would shortly inform the Committee about a proposed interim solution.

59. **Mr. Rodríguez-Rescia** said that the Committee ought to be consulted before such administrative and budgetary decisions were taken. It was better qualified to set priorities and make proposals for deletions. The chapter of the annual report containing an analysis of communications was of immense value.

60. **Ms. Edelenbos** (Chief, Petitions and Inquiries Section) said that her Section proposed that the content of the chapter should be issued as a separate official United Nations document, which would be referenced by a hyperlink in the annual report. However, the document would be available in English only.

61. **Mr. Iwasawa** said that the interim solution proposed by the secretariat was not ideal, since the document would be available in only one language, but he nonetheless welcomed the proposal.

62. **The Chairperson** expressed concern about the fact that budgetary issues were frequently resolved by imposing severe restrictions on the Committee's documentation. He requested the Committee's permission to raise the issue of costly translation services at the Meeting of Chairpersons of the Human Rights Treaty Bodies to be held in June 2015. The Chairpersons could perhaps request the High Commissioner to seek access to translation services at a more reasonable rate so that additional resources were available for other requirements.

63. **Sir Nigel Rodley** expressed support for the Chairperson's proposal. He strongly objected to the decision to apply the 10,700-word limit to annual reports. The Division of Conference Management, which was responsible for providing conference services, was severely overstressed and seeking to apply budgetary restrictions in a variety of areas. He wondered to what extent the Division consulted with the secretariat of the Office of the United Nations High Commissioner for Human Rights (OHCHR) when it took such decisions. As translation costs were not treaty-body specific, it was unlikely that a great deal could be achieved by the treaty bodies in that area.

64. **Mr. Muhumuza** asked whether the treaty bodies had been represented when the treaty-body strengthening process had been discussed by the General Assembly.

65. **Sir Nigel Rodley** said that the Co-facilitators of the process, appointed by the President of the General Assembly, had consulted with the treaty bodies at both formal and informal meetings. However, they had engaged in closer and more continuous consultations with OHCHR.

66. The basic principle was that there should be zero growth in the budget. Hence, if a treaty body wished to increase its meeting time, cutbacks were required at some other level. The eventual budget cuts had affected the Division of Conference Management rather than OHCHR. It was unclear, however, to what extent OHCHR had been involved in the decision-making.

A proposal to introduce an expedited process for repetitive communications

67. **The Chairperson** invited Mr. Shany to introduce his proposal for an expedited process for handling repetitive communications.

68. **Mr. Shany** said that his proposal was designed to address the growing backlog of pending communications. The idea was to institute an expedited review process for communications that were very similar to those reviewed in the past. The Committee currently spent a great deal of time ensuring the consistency of Views adopted on repetitive communications, partly because such communications were examined by different rapporteurs under the current system.

69. He proposed that two special rapporteurs should be appointed to handle repetitive communications. The Special Rapporteur on New Communications and Interim Measures would refer the cases to them and they would submit a folder containing draft Views to the Working Group on Communications. If no member of the Working Group wished to remove a case from the expedited track, the folder would be submitted to the plenary.

70. Clearly, the communications would receive less attention than was currently the case. However, the new procedure would ensure greater consistency and would enable the Committee to increase its productivity and serve more victims.

71. **Mr. Seetulsingh** said that new Committee members sometimes adopted a fresh approach to repetitive cases, revealing aspects that had been ignored in the past. He asked whether the secretariat could provide statistics regarding repetitive cases.

72. **Mr. Rodríguez-Rescia** expressed support for the proposal. However, he emphasized the importance, in the interests of due process, of ensuring that all draft Views were discussed and approved in plenary.

73. **The Chairperson** drew attention to Mr. Shany's draft proposal, in which he made it clear that all members the Committee would be entitled to ask for detailed consideration of any case before the plenary.

74. **Mr. Iwasawa** pointed out that the rapporteurs appointed to handle repetitive cases would require the secretariat's assistance. He therefore asked the secretariat whether the resources currently available would be sufficient to implement the proposed new system.

75. **Mr. Ben Achour** said that if a member of the Working Group on Communications challenged the inclusion of a communication in the folder of repetitive cases, there was little prospect of reducing the backlog under the new system. The task of deciding whether a case was repetitive presented major challenges, since no two cases were ever exactly the same.

76. **Ms. Seibert-Fohr** drew attention to the fact that Committee members were performing an increasing number of tasks between sessions. However, she strongly supported the idea of adopting a consolidated approach to the drafting of Views. The drafts could be placed in a separate folder for submission to the plenary following their approval by the Working Group and treated as repetitive cases to be adopted by the end of the session unless a member requested a detailed discussion.

77. **Ms. Cleveland** expressed strong support for Mr. Shany's proposal, which would ensure the consistency of the Committee's jurisprudence. She agreed, however, that new Committee members might wish to develop the jurisprudence and that consolidated Views could serve as models for a series of cases. Cases which were similar in terms of the facts and context but which raised separate issues that were not covered by the pilot Views could be flagged by the rapporteurs handling repetitive communications.

78. **Mr. Bouzid** asked whether the proposed expedited process was in conformity with the Committee's rules of procedure.

79. **Mr. Ben Achour** suggested that the rapporteurs on repetitive communications should sidestep the Working Group and submit their draft Views directly to the plenary.

80. **Ms. Edelenbos** (Chief, Petitions and Inquiries Section) said that the secretariat had no statistics on repetitive cases, especially since the submissions from all parties should be taken into account before any conclusions were drawn.

81. With regard to resources, the proposed procedure would not help the secretariat to prepare more draft Views, but it might give the Committee more time to discuss cases that did not fall into the repetitive category during the session.

82. **Mr. Shany** said that a valid point had been made regarding new members. The launching of the new procedure should therefore be deferred for one or two sessions. He agreed that time would not be saved if members of the Working Group challenged the draft Views on many repetitive cases. The proposed procedure should perhaps be tested for a year and then assessed. The rules of procedure would not be breached if the draft Views on repetitive cases were submitted to the Working Group and the plenary. He agreed that the rapporteurs should submit a folder to the plenary, flagging issues that might require further debate.

The meeting rose at 6.05 p.m.